

**REMARKS**

Reconsideration is requested.

Claims 1-21, 24-31, 33-35, 38-39, 42-47, 49-57, 59-61, 63-64 and 66-68 have been canceled, without prejudice.

Claims 1, 15, 16, 22-24, 32, 36, 37, 40, 41, 48, 50, 51, 57, 58 and 62-69 are pending. Claim 48 has been allowed. Claims 22-23, 32, 40-41, 58, 62 and 65 have been objected to as being dependent upon a rejected base claim. Claims 22-23, 32, 40-41, 58, 62 and 65 have been rewritten above to place the claims 22-23, 32, 40-41, 48, 58, 62 and 65 in condition for allowance. Claim 69 is submitted to be allowable in view of the attached copy of the Budapest Treaty Deposit receipt for FERM BP-6791 along with the statement below with regard to the availability of the deposited material. The dependencies of claims 36 and 37 have been amended above to be dependent from what is believed to be allowable claim 22. Upon entry of the above amendments, claims 22, 23, 32, 36, 37, 40, 41, 48, 58, 62, 65 and 69 will be pending.

Entry of the present Amendment will place the application in condition for allowance. Entry of the present Amendment and allowance of the application are requested.

Specifically, the Section 112, first paragraph, rejection of claim 69 is obviated by the attached Budapest Treaty Deposit Receipt, the disclosure of the deposit information on page 104 of the specification, and the assignee's assurance that all restrictions upon public access to the deposited material of claim 69 will be irrevocably removed upon the

grant of a patent on this application which contains a claim to the product of claim 69.

Withdrawal of the Section 112, rejection of claim 69 is requested.

The Section 103 rejection of claims 1, 15-16, 24, 36-37, 50, 51, 57, 63, 64 over Shitara (U.S. Patent No. 5,750,078), Queen (U.S. Patent No. 5,530,101) and Nakamura (Cancer, 80 (12 Suppl):2650-2655, 15 December 1997), will be moot upon entry of the present Amendment.

The Section 103 rejection of claims 1, 15, 16, 24, 36, 37, 50, 51, 57, 63, 64 and 66-68 over Shitara, Queen and Nakamura will be moot upon entry of the present Amendment.

The Section 103 rejection of claims 1, 15, 16, 24, 36, 37, 50, 51, 57, 63, 64 and 66-68 over Shitara (EP 0533199), Queen and Nakamura will be moot upon entry of the present Amendment.

The obviousness-type double patenting rejection of claims 1, 15, 16, 24, 36, 37, 50, 51, 57, 63, 64 and 66-68 over claims 1-4 of U.S. Patent No. 6,437,098 "in view of" Queen (U.S. Patent No. 5, 530,101) and Nakamura will be moot upon entry of the present Amendment.

The Examiner's request that applicants confirm that the inventions of claims 1, 15, 16, 24, 36, 37, 50, 51, 57, 63, 64 and 66-68 of the present application and claims 1-4 of the commonly assigned U.S. Patent No. 6,437,098, were commonly owned at the time of the invention of the present application will be moot upon entry of the present Amendment.

The obviousness-type double patenting rejection of claims 1, 15, 16, 24, 36, 37, 50, 51, 57, 63, 64 and 66-68 over claim 2 of U.S. Patent No. 5,750,078 "in view of"

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Shitara (EP 0533199), Queen (U.S. Patent No. 5,530,101) and Nakamura, will be moot upon entry of the present Amendment.

The Examiner's request that applicants confirm that the inventions of claims 1, 15, 16, 24, 36, 37, 50, 51, 57, 63, 64 and 66-68 of the present application and the claims of U.S. Patent No. 5,750,078, were commonly owned at the time of the invention of the present application will be moot upon entry of the present Amendment.

The obviousness-type double patenting rejection of claims 1, 15, 16, 24, 36, 37, 50, 51, 57, 63, 64 and 66-68 over claims 1 and 2 of U.S. Patent No. 6,495,666 "in view of" Shitara (EP 0533199), Queen and Nakamura, , will be moot upon entry of the present Amendment.

The Examiner's request that applicants confirm that the inventions of claims 1, 15, 16, 24, 36, 37, 50, 51, 57, 63, 64 and 66-68 of the present application and claims 1 and 2 of U.S. Patent No. 6,495,666, were commonly owned at the time of the invention of the present application will be moot upon entry of the present Amendment.

Entry of the present Amendment will place the application in condition for allowance. entry of the present Amendment and a Notice of Allowance are requested.

The Examiner is requested to contact the undersigned in the event anything further is required in this regard.

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Respectfully submitted,

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## 国際形式 INTERNATIONAL FORM

## BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

[ 特許手続上の微生物の寄託の国際的承認  
に関するブダペスト条約 ]

下記国際寄託当局によって規則 7.1 に従い  
発行される。

## 原寄託についての受託証

## RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT

Issued pursuant to Rule 7.1 by the  
INTERNATIONAL DEPOSITORY AUTHORITY  
identified at the bottom of this  
page.

氏名（名称） 協和醸造工業株式会社  
取締役社長 平田 正  
寄託者 殿  
あて名 〒 東京都千代田区大手町一丁目6番1号

## 1. 微生物の表示

(受託者が付した識別のための表示)

KM8871b1L2

(受託番号)

FERM BP- 6791

## 2. 科学的性質及び分類学上の位置

1 條の微生物には、次の事項を記載した文書が添付されていた。

国 科学的性質  
国 分類学上の位置

## 3. 受領及び受託

本国際寄託当局は、平成 11 年 7 月 22 日（原寄託日）に受領した1條の微生物を受託する。

## 4. 移管請求の受領

本国際寄託当局は、 年 月 日（原寄託日）に1條の微生物を受領した。  
そして、 年 月 日に原寄託よりブダペスト条約に基づく寄託への移管請求を受領した。

## 5. 国際寄託当局

通商産業省工業技術院生命工学工業技術研究所

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Agency of Natural Resources and Environmental Science and Technology  
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平成11年(1999) 7月22日